

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #8	CCRB Case #: 201607109	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 08/14/2016 8:40 PM	Location of Incident: Echo Park and East Tremont Avenue; 46th Precinct stationhouse	Precinct: 46	18 Mo. SOL 2/14/2018	EO SOL 2/14/2018	
Date/Time CV Reported Thu, 08/18/2016 4:39 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 08/18/2016 4:39 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Konti Markvukaj	07228	956883	046 PCT
2. POF Theresa Lustica	01534	956859	046 PCT
3. POM Daniel Benavides	05014	958304	046 PCT
4. POM Kevin Martin	24921	941068	046 PCT
5. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Jorge Carvajal	03493	932427	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Theresa Lustica	Abuse: At Echo Park and East Tremont Avenue, Police Officer Theresa Lustica stopped § 87(2)(b)	
B.POM Konti Markvukaj	Abuse: At Echo Park and East Tremont Avenue, Police Officer Konti Markvukaj stopped § 87(2)(b)	
C.POF Theresa Lustica	Discourtesy: At Echo Park and East Tremont Avenue, Police Officer Theresa Lustica spoke discourteously to § 87(2)(b)	
D.POM Konti Markvukaj	Abuse: At Echo Park and East Tremont Avenue, Police Officer Konti Markvukaj threatened to arrest § 87(2)(b)	
E.POM Konti Markvukaj	Off. Language: En route to the 46th Precinct stationhouse, Police Officer Konti Markvukaj made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)	
F.POM Konti Markvukaj	Off. Language: En route to the 46th Precinct stationhouse, Police Officer Konti Markvukaj made remarks to § 87(2)(b) based upon ethnicity.	
G.POM Konti Markvukaj	Discourtesy: En route to the 46th Precinct stationhouse, Police Officer Konti Markvukaj spoke discourteously to § 87(2)(b)	
H.POF Theresa Lustica	Off. Language: En route to the 46th Precinct stationhouse, Police Officer Theresa Lustica made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)	
I.POM Konti Markvukaj	Force: Outside the 46th Precinct stationhouse, Police Officer Konti Markvukaj used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J.POM Konti Markvukaj	Force: Inside the 46th Precinct stationhouse, Police Officer Konti Markvukaj used physical force against § 87(2)(b)	
K.POM Konti Markvukaj	Force: Inside the 46th Precinct stationhouse, Police Officer Konti Markvukaj used physical force against § 87(2)(b)	
L.POF Theresa Lustica	Force: Inside the 46th Precinct stationhouse, Police Officer Theresa Lustica used physical force against § 87(2)(b)	
M.POM Daniel Benavides	Force: Inside the 46th Precinct stationhouse, Police Officer Daniel Benavides used physical force against § 87(2)(b)	
N.POM Daniel Benavides	Force: Inside the 46th Precinct stationhouse, Police Officer Daniel Benavides used physical force against § 87(2)(b)	
O. An officer	Force: Inside the 46th Precinct stationhouse, an officer used physical force against § 87(2)(b)	
P.POM Daniel Benavides	Discourtesy: Inside the 46th Precinct stationhouse, Police Officer Daniel Benavides spoke discourteously to § 87(2)(b)	
Q.POM Konti Markvukaj	Abuse: Inside the 46th Precinct stationhouse, Police Officer Konti Markvukaj refused to provide his name and shield number to § 87(2)(b)	
R.POF Theresa Lustica	Abuse: Inside the 46th Precinct stationhouse, Police Officer Theresa Lustica refused to provide her name and shield number to § 87(2)(b)	
S.POM Kevin Martin	Abuse: Inside the 46th Precinct stationhouse, Police Officer Kevin Martin did not obtain medical treatment for § 87(2)(b)	
T.POF Theresa Lustica	Abuse: Inside the 46th Precinct stationhouse, Police Officer Theresa Lustica did not obtain medical treatment for § 87(2)(b)	

### Case Summary

This complaint was filed by § 87(2)(b) on August 18, 2016 in-person at the CCRB.

On August 14, 2016, at approximately 8:40 p.m., § 87(2)(b) was at Echo Park and East Tremont Avenue in the Bronx. § 87(2)(b) was with a friend, § 87(2)(b) and § 87(2)(b) were approached by PO Theresa Lustica and PO Konti Markvukaj of the 46<sup>th</sup> Precinct. § 87(2)(b) was stopped by PO Lustica and PO Markvukaj at the park while § 87(2)(b) was ultimately issued a summons (**Allegation A-B**). PO Lustica allegedly called § 87(2)(b) a “smartass” (**Allegation C**). PO Markvukaj threatened to arrest § 87(2)(b) (**Allegation D**). § 87(2)(b) was placed under arrest to be processed for a summons at the stationhouse because he failed to produce identification. En route to the stationhouse, PO Markvukaj allegedly made remarks to § 87(2)(b) based upon sexual orientation and ethnicity and spoke discourteously to him (**Allegation E-G**). PO Lustica also allegedly made remarks to § 87(2)(b) based upon sexual orientation en route to the stationhouse (**Allegation H**). Outside of the stationhouse, PO Markvukaj used physical force against § 87(2)(b) to get him inside the stationhouse (**Allegation I**). Inside the stationhouse, PO Markvukaj used physical force to lodge § 87(2)(b) inside the cells (**Allegation J**). § 87(2)(b) alleged he fell to the floor while he was being lodged and was allegedly dragged across the floor by PO Markvukaj, PO Lustica, and PO Daniel Benavides (**Allegation K-M**). PO Benavides allegedly kicked § 87(2)(b) in the ribs and in the leg (**Allegation N**). An officer allegedly punched § 87(2)(b) in the head (**Allegation O**). After he was lodged, § 87(2)(b) began kicking the cell door. PO Benavides allegedly told § 87(2)(b) to “Shut the fuck up” and called him a “piece of shit” (**Allegation P**). PO Markvukaj and PO Lustica allegedly refused to provide their name and shield numbers to § 87(2)(b) (**Allegation Q-R**). PO Kevin Martin and PO Lustica allegedly refused to obtain medical treatment for § 87(2)(b) (**Allegation S-T**).

§ 87(2)(b) recorded video of the very beginning of this incident at the park but did not provide it to the CCRB. No other video was available of this incident. § 87(2)(b) was released with summonses for violation of park rules and disorderly conduct.

### Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation due to the injuries alleged by § 87(2)(b) and the hospital treatment he received as a result.
- The NYC Office of the Comptroller responded to a request on November 1, 2016 indicating that no notice of claim has been filed regarding this incident (Board Review 01).
- A call to the Bronx Criminal Court Section on November 14, 2016 revealed that the disposition of the summonses issued to § 87(2)(b) remains open § 87(2)(b)

- § 87(2)(b)

### **Civilian and Officer CCRB Histories**

- This is the first complaint filed by § 87(2)(b) and § 87(2)(b) with the CCRB (Board Review 03, 26).
- PO Markvukaj has been a member of the service for two years and has three substantiated allegations in CCRB case 201603962 involving a stop, question, and strip-search for which the board recommended Command Discipline B. The NYPD has not yet made a disposition on this case. PO Markvukaj does not have any other allegations against him (Board Review 04).
- PO Lustica has been a member of the service for two years and this is her first complaint (Board Review 05).
- PO Benavides has been a member of the service for one year and this is his first complaint (Board Review 06).
- PO Martin has been a member of service and has 18 substantiated allegations involving five CCRB cases. In CCRB case 201101547 the Board substantiated a frisk and stop, recommended a command discipline, and the NYPD did not take disciplinary action due to statute of limitations. In CCRB case 201114083 the Board substantiated a stop, recommended charges, and the NYPD enforced no penalty. In CCRB case 201205296 the Board substantiated allegations of force, threat of arrest, a discourteous action, frisk, search of person, and stop, recommended charges, and the NYPD has not yet issued a disposition on this case. In CCRB case 201600123 the Board substantiated a frisk, recommended a command discipline B, and the NYPD has not yet issued a disposition on this case. In CCRB case 201603962 the Board substantiated an allegation of force, a strip search, stop, question, two discourtesy allegations, and two offensive language allegations, recommended charges, and the NYPD has not yet issued a disposition on this case. PO Martin also has an open physical force allegation in CCRB case 201606043. PO Martin has a total of 102 allegations involving 31 complaints. § 87(2)(g)

### **Potential Issues**

- A statement was not obtained from § 87(2)(b) regarding this incident. § 87(2)(b) could not provide any contact information for § 87(2)(b) aside from the address where they both reside. Two letters were mailed to § 87(2)(b) and no response was received. A CLEAR search did not reveal any additional contact information for § 87(2)(b)

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- PO Benavides testified that he did not have any recollection of this incident. § 87(2)(b) described an officer who was Asian or Hispanic male, stood 5'5" tall, with black hair, a heavyset build, and was dressed in uniform who allegedly used force against him and spoke discourteously to him at the stationhouse. PO Benavides is a Hispanic male, stands 5'3" tall, weighs 175 pounds, has a heavyset build and has black hair. PO Benavides had a stationhouse assignment on the incident date and was dressed in uniform. Based on the

matching physical description and that he was working at the stationhouse Allegation M, N, and P are pleaded against PO Benavides.

- PO Martin testified that he did not have any recollection of this incident. § 87(2)(b) described an officer who was a white male, 6'2 to 6'3" tall, with reddish/blonde hair in a short buzz cut, with blue eyes, and who was dressed in uniform who allegedly refused to obtain medical treatment for him at the stationhouse. PO Martin is a white male, 6'2" tall, with short red hair, and hazel eyes. PO Martin had a stationhouse assignment on the incident date and was dressed in uniform. Based on the matching physical description and that he was working at the stationhouse, Allegation S is pleaded against PO Martin.

#### **Allegations not pleaded**

- § 87(2)(b) was placed under arrest and transported to the stationhouse for processing. § 87(2)(b) was ultimately released with a summons for violation of park rules. Due to this processing, no stop allegation is pleaded on § 87(2)(b) behalf.

#### **Allegation A – Abuse of Authority: At Echo Park and East Tremont Avenue, Police Officer Theresa Lustica stopped § 87(2)(b)**

#### **Allegation B – Abuse of Authority: At Echo Park and East Tremont Avenue, Police Officer Konti Markvukaj stopped § 87(2)(b)**

§ 87(2)(b) testified that he was sitting on benches at Echo Park with his friend, § 87(2)(b) (Board Review 08). They had been sitting there talking for approximately half an hour and the sun had just finished setting. A police car containing PO Lustica and PO Markvukaj drove up next to where they were sitting. PO Lustica told them that the park was closed and that they had to leave. § 87(2)(b) began questioning the officers about why they had to leave. PO Markvukaj asked § 87(2)(b) for ID. § 87(2)(b) said that he did not have any ID. The conversation ensued back and forth, described in more detail in the next section, until § 87(2)(b) left the park and § 87(2)(b) was placed under arrest for failing to produce ID.

PO Lustica and PO Markvukaj testified that they were on patrol and were driving through the park (Board Review 9-10). Due to a recent shooting in the vicinity of the park, the officers were conducting patrols specifically in that area. They observed § 87(2)(b) and § 87(2)(b) sitting on the park benches after dusk. There are signs in the park that inform visitors that they cannot be in the park after dark. The officers told § 87(2)(b) and § 87(2)(b) that they could not be in the park after dark. § 87(2)(b) and § 87(2)(b) repeatedly refused to leave. The officers asked § 87(2)(b) and § 87(2)(b) for their IDs and they refused to provide ID. Eventually, § 87(2)(b) complied in leaving the park. § 87(2)(b) continued to refuse to leave, did not have ID, and was removed to the stationhouse for processing where he was ultimately issued a summons for violating park rules.

NYC Park Rules section 1-03 states that “persons may enter and use the parks from 6:00 a.m. until 1:00 a.m. unless other open hours are posted at any park.” The NYC Parks website specifies that parks close at dusk, except for Central Park, Prospect Park, Van Cortlandt Park, Flushing Meadows Corona Park and Staten Island Greenbelt Park which usually close at 1:00 a.m (Board Review 11).

In People v. Debour, 40 N.Y 2d 210 (1976), the court established criteria that officers must meet in order to forcibly detain an individual suspected of a crime. In order to stop and forcibly detain an individual (aka a level three encounter) officers must possess individualized

reasonable suspicion that the person has committed, is committing, or is about to commit a crime (Board Review 12).

§ 87(2)(b), § 87(2)(g)

**Allegation C – Discourtesy: At Echo Park and East Tremont Avenue, Police Officer**

**Theresa Lustica spoke discourteously to § 87(2)(b)**

**Allegation D – Abuse of Authority: At Echo Park and East Tremont Avenue, Police Officer**

**Konti Markvukaj threatened to arrest § 87(2)(b)**

§ 87(2)(b) testified that he told the officers that he and § 87(2)(b) were not doing anything wrong in the park and asked why they had to leave (Board Review 08). § 87(2)(b) started recording the officers with his cell phone because he was afraid they would shoot him. He turned the flash on his phone so that he could capture the officers' faces. PO Lustica said, "Enough with the lights." After § 87(2)(b) ended the recording, PO Lustica asked, "You feel like a smartass?" § 87(2)(b) asked the officers if he had to give them his ID and if he was under arrest. PO Markvukaj told § 87(2)(b) that he was under arrest for not providing an ID.

§ 87(2)(b) played the video he recorded of this incident during his interview. After his interview, § 87(2)(b) refused to allow the undersigned to retrieve the file from his phone. § 87(2)(b) stated he would forward the file to the undersigned but did not do so despite follow up contact attempts to remind him. In the recording, PO Markvukaj is heard telling § 87(2)(b) that he would "lock him up." The alleged discourtesy from PO Lustica is not heard on the recording. The video played was dark and very little could be seen.

PO Lustica and PO Markvukaj offered the following generally consistent testimony (Board Review 9-10). After being told that they could not be in the park, § 87(2)(b) became hostile with the officers and repeatedly refused to provide his ID. § 87(2)(b) began recording the officers with his phone. The flash on the phone made it difficult to see § 87(2)(b). For their safety, the officers got out of their car. § 87(2)(b) continued to refuse to give the officers ID. PO Markvukaj told § 87(2)(b) that he would be placed under arrest and would have to be processed at the stationhouse if he did not produce any ID. The officers intended to issue § 87(2)(b) a summons for refusing to leave the park. § 87(2)(b) took § 87(2)(b) phone and left the area on his own. The officers did not do anything about § 87(2)(b) because he left the park. PO Lustica did not call § 87(2)(b) a "smart ass." § 87(2)(b) was placed under arrest to be processed at the stationhouse.

PG 203-09 states that officers must be courteous and respectful in their conduct with the public (Board Review 13).

In PD v Grossman (OATH Index No 2382/00R) an officer was found to have committed misconduct when he threatened to arrest an individual without having the authority to do so (Board Review 14).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation E – Offensive Language: En route to the 46th Precinct stationhouse, Police Officer Konti Markvukaj made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)**

**Allegation F – Offensive Language: En route to the 46th Precinct stationhouse, Police Officer Konti Markvukaj made remarks to § 87(2)(b) based upon ethnicity.**

**Allegation G – Discourtesy: En route to the 46th Precinct stationhouse, Police Officer Konti Markvukaj spoke discourteously to § 87(2)(b)**

**Allegation H – Offensive Language: En route to the 46th Precinct stationhouse, Police Officer Theresa Lustica made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)**

§ 87(2)(b) testified that he was handcuffed and placed in the back of the police car (Board Review 08). Upon entering the car, nobody was saying anything. When the car started moving, PO Markvukaj said, “Why do you wear long hair? Do you feel like a woman? Is that your boyfriend? You’re a slimeball, a piece of shit, good for nothing immigrant.” In response to these insults to his person and existence as a human being, § 87(2)(b) became angry and started “acting like an idiot.” § 87(2)(b) was saying, “You fucking cop. You piece of shit. You’re more worthless than me.” PO Lustica started laughing and said, “So you like men, huh? So that’s why you wear long hair?” § 87(2)(b) responded by calling PO Lustica a “nigger whore.” § 87(2)(b) said, “If I was gay, what’s your problem anyway?” § 87(2)(b) mind went blank so he stopped saying anything to the officers.

PO Lustica and PO Markvukaj offered the following consistent testimony regarding the transport of § 87(2)(b) to the stationhouse (Board Review 9-10). The ride to the stationhouse is very short. During the ride, § 87(2)(b) persisted in screaming insults at the officers. § 87(2)(b) was calling PO Markvukaj a “faggot” and a “homo.” § 87(2)(b) was calling PO Lustica a “nigger,” “bitch,” and a “whore.” The officers did not respond to § 87(2)(b). There was no discussion in the car about § 87(2)(b) hair. PO Markvukaj and PO Lustica both denied that any of the alleged remarks were made toward § 87(2)(b).

PG 203-10 states that officers are prohibited from using discourteous or disrespectful remarks regarding another person’s ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability (Board Review 15).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation I – Force: Outside the 46th Precinct stationhouse, Police Officer Konti**

**Markvukaj used physical force against § 87(2)(b)**

**Allegation J – Force: Inside the 46th Precinct stationhouse, Police Officer Konti Markvukaj used physical force against § 87(2)(b)**

**Allegation K – Force: Inside the 46th Precinct stationhouse, Police Officer Konti Markvukaj used physical force against § 87(2)(b)**

**Allegation L – Force: Inside the 46th Precinct stationhouse, Police Officer Theresa Lustica used physical force against § 87(2)(b)**

**Allegation M – Force: Inside the 46th Precinct stationhouse, Police Officer Daniel Benavides used physical force against § 87(2)(b)**

**Allegation N – Force: Inside the 46th Precinct stationhouse, Police Officer Daniel Benavides used physical force against § 87(2)(b)**

**Allegation O – Force: Inside the 46th Precinct stationhouse, an officer used physical force against § 87(2)(b)**

§ 87(2)(b) testified that when he got out of the police car when they arrived at the stationhouse, PO Markvukaj led § 87(2)(b) into the stationhouse (Board Review 08). § 87(2)(b) was walking on his own and was not doing anything to prevent himself from being taken into the stationhouse. Despite this, PO Markvukaj repeatedly pushed § 87(2)(b) in the shoulder while entering the stationhouse. § 87(2)(b) face pressed into the first door of the stationhouse and his chest made contact with the second door as a result of PO Markvukaj pushing him. Inside the stationhouse, PO Markvukaj pushed § 87(2)(b) in the shoulder all the way from the desk, down a hallway, and into the stationhouse cell area. In response, § 87(2)(b) started hopping around to keep himself balanced. PO Markvukaj slammed his face into a door. § 87(2)(b) fell to the floor. § 87(2)(b) was dragged across the floor into the cell by PO Markvukaj, PO Lustica, PO Benavides. These three officers had a hold all over § 87(2)(b) body and were dragging him across the floor. § 87(2)(b) was not doing anything with his body as he was being dragged across the floor. PO Markvukaj pressed § 87(2)(b) face into the floor. PO Benavides kicked § 87(2)(b) once in the ribs and four or five times on his legs. An officer § 87(2)(b) believed was a captain because he had multi-colored insignia medals on his chest punched § 87(2)(b) on the side of his head. § 87(2)(b) described the “captain” as a tall white male, with dirty blonde hair, green eyes, dressed in a blue uniform. The officers left the cell. § 87(2)(b) got up and began spitting at the captain. The captain came back into the cell and shoved § 87(2)(b) into the bench in the cell. No other prisoners were in the cells.

§ 87(2)(b) testified that he sought medical treatment after he was released from police custody for difficulty breathing, pain in his right side, a “clicking sound” on his sides, and digestive issues associated with the force that was used against him at the stationhouse. § 87(2)(b)

§ 87(2)(b) sought treatment at § 87(2)(b) Hospital and § 87(2)(b) Hospital after he was released.

§ 87(2)(b) testified that he ended up refusing medication from § 87(2)(b) Hospital. He went on to say that he was evaluated at § 87(2)(b) Hospital, where he was told nothing was wrong with



him but was nevertheless released with a walking cane. The records associated with these hospital visits were received by the CCRB.

An ambulance was requested to pick up § 87(2)(b) from his residence because he was having difficulty breathing. The ambulance call report reflected that § 87(2)(b) complained of abdominal pain pursuant to an assault. § 87(2)(b) stated he felt nauseous, constipated, and was vomiting prior to the ambulance arriving. The EMTs noted negative deformities, contusions, abrasions, punctures, burns, lacerations or swelling (Board Review 16).

The roll call, command log, and interrupted patrol log for the incident date were received from the NYPD (Board Review 19-21). These documents did not reveal any officer who fit the description of the officer § 87(2)(b) described as the “captain” who would have been at the stationhouse during the time § 87(2)(b) was in custody. The prisoner holding pen roster confirmed that no other prisoners were in the cells when § 87(2)(b) was brought to the stationhouse (Board Review 26).

§ 87(2)(b) was transported to § 87(2)(b) Hospital. The medical records associated with this treatment reflect that § 87(2)(b) complained of pain to his wrists, abdominal pain, and lower back pain. § 87(2)(b) was described as being “intoxicated/high” and that he was “overreacting to symptoms. § 87(2)(b) was prescribed medication but refused to take it. § 87(2)(b) left the hospital before he could receive any further evaluation from medical personnel (Board Review 17).

§ 87(2)(b) also sought medical treatment at § 87(2)(b) Hospital on § 87(2)(b). The records reflect that § 87(2)(b) complained of headache, blurred vision, neck pain, weakness, and right side pain following an altercation with police. § 87(2)(b) reported to medical personnel that he was involved in a verbal altercation with the police, was assaulted, handcuffed, and taken into custody. § 87(2)(b) reported that he was struck in the head and abdomen, was punched, kicked, and thrown to the ground. § 87(2)(b) denied nausea, vomiting, and shortness of breath. § 87(2)(b) was X-rayed and CT scanned and was found to have “completely unremarkable findings.” The reporting personnel concluded that § 87(2)(b) account was not plausible given the findings of their evaluation. § 87(2)(b) was prescribed Tylenol. The records gave no indication that § 87(2)(b) was provided a walking cane (Board Review 18).

PO Lustica and PO Markvukaj offered the following consistent testimony (Board Review 9-10). After taking him out of the car, § 87(2)(b) began pushing his body backwards against PO Markvukaj as he was being led into the stationhouse. PO Markvukaj was behind § 87(2)(b) and did not push him. Instead, PO Markvukaj remained behind § 87(2)(b) while holding onto § 87(2)(b) to prevent him from moving backwards. § 87(2)(b) did not make any impact with the front doors to the stationhouse. Inside the stationhouse, § 87(2)(b) continued pushing his body back against PO Markvukaj. § 87(2)(b) was also thrusting his head backwards as if to headbutt PO Markvukaj. PO Markvukaj continued walking behind § 87(2)(b) with his hands on his back and arms to keep him moving forward into the cell. Nobody else was physically involved in lodging § 87(2)(b) though other officers might have been around because § 87(2)(b) was causing a commotion by screaming inside the stationhouse. § 87(2)(b) never fell to the floor. § 87(2)(b) was never dragged across the floor. The incident, as described by § 87(2)(b) was described to PO Lustica and PO Markvukaj and they both denied that anything of the sort happened. After he was in the cells, § 87(2)(b) spit on PO Markvukaj. PO Markvukaj did not respond to this at all.

Sgt. Carvajal testified he was working as the desk officer at the time § 87(2)(b) was brought to the stationhouse (Board Review 22). § 87(2)(b) was screaming and cursing at everyone immediately upon entering the stationhouse. § 87(2)(b) was “squirming” his body by

shaking his upper body as he was being brought to the desk. PO Lustica and PO Markvukaj did not do anything in response to this other to continue holding onto his arms. PO Lustica and PO Markvukaj walked § 87(2)(b) back to the cell area. § 87(2)(b) persisted in screaming while he was being lodged but was not doing anything with his body. Sgt. Carvajal did not see § 87(2)(b) attempt to headbutt either of the officers. Sgt. Carvajal did not observe any physical struggle between the officers and § 87(2)(b) never fell to the floor. While he was positioned at the desk, Sgt. Carvajal would have been in a position to overhear any commotion in the cells. He also has access to the stationhouse camera feed at the desk and did not observe any struggle while § 87(2)(b) was being lodged.

PO Benavides testified that he did not have any recollection of this incident (Board Review 23). PO Benavides' recollection was not refreshed by being presented a photo of § 87(2)(b) or having details of the incident described to him during his interview. PO Benavides was working in the 124 room and was entering UF61 complaints during the time § 87(2)(b) was at the stationhouse. PO Benavides is a Hispanic male, stands 5'3" tall, weighs 175 pounds, has a heavyset build, has black hair, and was dressed in uniform. PO Benavides did not assist with lodging anyone in the cells and did not use force against anyone at the stationhouse.

PG 221-01 states that "force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances" (Board Review 24).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

**Allegation P - Discourtesy: Inside the 46th Precinct stationhouse, Police Officer Daniel Benavides spoke discourteously to § 87(2)(b)**

§ 87(2)(b) testified that while he was in the cells he began kicking the gate to the cell (Board Review 08). § 87(2)(b) was kicking the gate every five to ten minutes to get on the

officers' nerves. PO Benavides came into the cell area and said, "Fuck you. Fuck you. You piece of shit. Fuck you, you piece of shit." § 87(2)(b) responded, "I'll fuck you too. You don't mean anything to me." § 87(2)(b) then remained quiet inside of the cells.

PO Benavides testified that he had no recollection of the incident (Board Review 23). A photo of § 87(2)(b) and details of the incident were provided to PO Benavides and he did not have any recollection of the incident. PO Benavides did not interact with anyone in the cell area. PO Benavides denied using any profanity toward anyone at the stationhouse. PO Benavides was working in the 124 room at the stationhouse and was entering complaints while § 87(2)(b) was at the stationhouse.

PO Lustica, PO Markvukaj, and Sgt. Carvajal all provided testimony that other officers went to the cell area to speak with § 87(2)(b) who was banging on the cells and screaming while he was inside the cells (Board Review 9,10,22). None of them could specify who went to speak with § 87(2)(b). Sgt. Carvajal indicated that officers went to speak with him to calm him down. PO Lustica and PO Markvukaj testified that officers went to try and obtain § 87(2)(b) name because he refused to identify himself to them. All three officers denied hearing anyone tell § 87(2)(b) "Fuck you" or calling him a "piece of shit."

PG 203-09 states that officers must be courteous and respectful in their conduct with the public (Board Review 13).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

**Allegation Q: Abuse of Authority: Inside the 46th Precinct stationhouse, Police Officer Konti Markvukaj refused to provide his name and shield number to § 87(2)(b)**

**Allegation R: Abuse of Authority: Inside the 46th Precinct stationhouse, Police Officer Theresa Lustica refused to provide her name and shield number to § 87(2)(b)**

§ 87(2)(b) testified that he did not have any ID during this incident and that he provided the officers with a fake name because the officers were going to run his records anyway (Board Review 08). PO Markvukaj and PO Lustica came into the cell area and asked § 87(2)(b) again for his name. § 87(2)(b) said, "Hey, it's too late asshole. Fuck you." § 87(2)(b) continued screaming, "Fuck you. Don't touch me. I don't feel safe with you. Get away from me. What's your name and badge numbers?" PO Markvukaj responded, "If you don't help us we're not going to help you."

We're doing this right now. We're not doing that. We're doing this." PO Markvukaj and PO Lustica left without providing their name and badge number to § 87(2)(b).

PO Markvukaj and PO Lustica both testified that they made no attempt themselves to obtain § 87(2)(b) name while they were at the stationhouse (Board Review 9-10). Because § 87(2)(b) had been expressing so much hostility toward them, PO Markvukaj and PO Lustica sent other officers to attempt to obtain this information. Neither officer remembered who went to speak with § 87(2)(b). PO Markvukaj and PO Lustica both testified that they only returned to the cells to speak with § 87(2)(b) after they had determined his identity. § 87(2)(b) never asked them for their name or shield numbers. Both officers denied that they ever refused to provide this information to § 87(2)(b).

PG 203-09 states that officers must courteously and clearly state their rank, name, shield number, and command, to anyone who requests this information (Board Review 13).

§ 87(2)(b), § 87(2)(g)

**Allegation S: Abuse of Authority: Inside the 46th Precinct stationhouse, Police Officer Kevin Martin did not obtain medical treatment for § 87(2)(b)**

**Allegation T: Abuse of Authority: Inside the 46th Precinct stationhouse, Police Officer Theresa Lustica did not obtain medical treatment for § 87(2)(b)**

§ 87(2)(b) testified that PO Lustica and a different officer came into the cell area while he was in custody and asked him for his name. The second officer was a white male, stood 6'1" to 6'2" tall, had reddish/blonde hair in a short buzz cut, had blue eyes, and was in uniform. § 87(2)(b) had begun to feel tired, short of breath, dizzy, and had pain in the right side of his lungs, ribcage, and lower back. § 87(2)(b) said, "Can I please get some medical assistance?" PO Martin said, "You gotta help us first. We're going to get you medical assistance. We're going to take everything but you gotta help us." § 87(2)(b) continued telling the officers that he was not going to give them his name. PO Martin said, "EMS is not coming unless you help me." § 87(2)(b) said, "Ok. That's fine." The two officers left the cell area.

PO Martin testified that he did not have any recollection of this incident (Board Review 25). PO Martin's recollection of this incident was not refreshed by being presented a photo of § 87(2)(b) or having details of the incident described to him. PO Martin denied that he went to speak with anyone in the stationhouse cells. PO Martin was working as the T/S Operator at the stationhouse. PO Martin is a white male, stands 6'2" tall, has short red hair, hazel eyes, and was dressed in uniform. PO Martin denied refusing to obtain medical treatment for anyone at the stationhouse.

As described above, PO Lustica testified that she made no attempt to obtain § 87(2)(b) real name at the stationhouse (Board Review 09). PO Lustica knew that other officers had gone to speak with § 87(2)(b) while at the stationhouse but she did not remember who specifically did this. After determining § 87(2)(b) identity, PO Lustica and PO Markvukaj went to cells to tell § 87(2)(b) that he was being released with summonses. § 87(2)(b) was still banging on the cells when the officers entered the cell area. PO Lustica told § 87(2)(b) that he would be sent to the hospital if he did not calm down. § 87(2)(b) became cooperative until he was finally released. § 87(2)(b) never complained of any injuries and did not request medical

attention. PO Lustica denied that she refused to obtain medical treatment for § 87(2)(b) PO Lustica did not observe any injuries to § 87(2)(b) when he was released.

PO Markvukaj testified that he did not observe any injuries to § 87(2)(b) and that he never requested medical attention (Board Review 10). Sgt. Carvajal testified that he did not observe any injuries to § 87(2)(b) when he was brought into the stationhouse but he did not remember if he was present when § 87(2)(b) was released (Board Review 22).

§ 87(2)(b), § 87(2)(g)

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Squad: 8

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date